IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANIDGARH

C.W.P. No. 14647 of 2003

Date of Decision : 27.09.2006

Harpal Singh .... Petitioner

Versus

State of Punjab & others. ... Respondents

CORAM : HON'BLE MR. JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

Present : Mr. Vikram K. Chaudhri, Advocate,
for the petitioner.

Mr. Ashok Aggarwal, Addl. Advocate General, Punjab,
for respondent Nos. 1 to 3.

Ms. Sangeeta Dhanda, Advocate,
for respondent Nos. 4 to 9.

S.D. ANAND, J.

1. The petitioner is a matriculate and a Class IV employee in the office of District Election Office, Amritsar and is governed by the provisions of the Punjab State Class IV Services Rules, 1963. He had been appointed to that post vide appointment letter dated 14.12.1993 (Annexure P-1). His services came to be regularized thereafter.

2. There is a fixed quota for promotion of Class IV employees to the clerical cadre (Class III). For promotion to Class III, an employee of Class IV cadre must be a matriculate and have knowledge of Punjabi. Being a matriculate, he is fully qualified for promotion to the Class III within the quota meant for his category of employees. A number of employees junior to him have already been promoted to the clerical cadre with a rider that they

would qualify the type test within an indicated period. The further consequential part of the rider is that they would not get increments till they qualify that test (Annexures P-8 and P-9). However, the petitioner has not been promoted to the clerical cadre inspite of the fact that he appeared at the typing test twice and faired well but the result was not announced to him.

3. The plea raised by the petitioner is of discrimination on an averment that respondent Nos. 4 to 9, who are junior to him in service, have already been promoted to the clerical cadre (Class III); while that promotion has been denied to him, even with the riders aforementioned.

4. The pure and simple plea raised by the respondent Nos. 1 to 3 is that the private respondent Nos. 4 to 9 have been promoted in accordance with the Punjab Department of Elections (State Service, Class III) Rules, 1984 (notified on 13.1.1984) only after they qualified the Punjabi Typewriting Test held during the period 1.7.2003 to 3.7.2003.

5. No written statement was filed on behalf of respondent Nos. 4 to 9. Their counsel stated at the bar that she adopts the written statement filed by the official respondents.

6. We have heard Mr. Vikram K. Chaudhri, learned counsel for the petitioner, Mr. Ashok Aggarwal, Additional Advocate General, Punjab, for respondent Nos. 1 to 3 and Ms. Sangeeta Dhanda, learned counsel for respondent Nos. 4 to 9.

7. The learned counsel for the petitioner, at the very outset, argued that the grant of promotion by the Competent Authority to respondent Nos. 4 to 9, who are junior to him in service, and denial thereof to him is proof adequate enough of the fact that he is being discriminated against. The plea thereby is that the Competent Authority cannot validly discriminate as

between the similarly circumstance officials.

8. The plea raised stems from a factually incorrect premise and deserves to be outrightly negatived. There is a categorical averment in para no. 14 (written statement filed by respondent Nos. 1 to 3 and adopted by the private respondents) that respondent Nos. 4 to 9 were promoted vide order dated 16.7.2003 only after they qualified the Punjabi Typewriting Test during the period 1.7.2003 to 3.7.2003. The relevant part of the pleading is extracted as under:-

> "The respondent Nos. 4 to 9 qualified the Punjab Typewriting test, which was held on 1.7.2003 to 3.7.2003 by this department."

9. Qua the petitioner, there is an equally categorical averment in paragraph Nos. 4,6 to 10, 13, 15 and 16 of the written statement aforesaid that he could not be promoted as he could not qualify the typing test.

10. It would be noticed that those officials (who had been promoted vide orders dated 18.10.1993 and 13.10.1995 and to whom Annexures P/8 and P/9 are relatable) have not been impleaded as parties to the present writ petition. It is, thus, not competent for this Court to adjudicate the advocated plea of discrimination vis-a-vis those non-party officials.

11. Faced with the predicament aforesaid, the learned counsel for the petitioner invited our attention to an averment in paragraph no. 17 of the written statement that certain Class IV employees (other than private respondent Nos. 4 to 9) did indeed come to be promoted (vide orders dated 18.10.1993 and 13.10.1995 to the clerical cadre with the rider that they would qualify the Punjabi Typewriting test within a period of six months. This, the learned counsel argued establishes the plea of discrimination

because no such benefit has been extended to the petitioner. Reliance, in support of the advocated plea, was also placed on a Division Bench ruling of this Court in C.W.P. No. 7586 of 1999 - Ram Dass and others versus State of Punjab and others, decided on 6.1.2003 (Annexure P/10).

12. There is plethora of law on the point that equality cannot be claimed in illegalities. If an illegal/irregular act came to be done in the past, it does not create entitlement to further perpetuation thereof. We are supported in the context by **Kuldeep Singh versus Govt. of NCT of Delhi, JT 2006(6) SC 199** and **State of U.P. Versus Neeraj Awasthi and others, (2006) 1 Supreme Court Cases, 667**. Though the official respondents are indicated by Annexure P/8 and Annexure P/9 to have promoted the non-impleaded officials to the clerical cadre with rider, it cannot be denied that their promotion was not envisioned by the Punjab Department of Elections (State Services, Class III) Rules, 1984. Insofar as the judicial pronouncement in Ram Dass's case (supra) is concerned, it proceeded on the premise that the instructions issued by the Government provide for the promotion of an employee on a condition that he would qualify the type test within a period of one year of being promoted. It appears that the Punjab Department of Elections (State Services, Class III) Rules, 1984 were not brought to the notice of that Bench. Even otherwise, there can be no dispute with the proposition that administrative instructions cannot stand against the rules, which are clothed with a statutory character. In the present case, it is apparent that the promotions from Class IV to Class III are governed by the Punjab Department of Elections (State Services, Class III) Rules, 1984, which were notified on 13.1.1984. Statutory rules would, obviously, get precedence over the administrative instructions and the latter must make way

for the former on point of cognizable enforceability.

13. For the aforementioned reasons, the writ petition is held to be devoid of merit. We, accordingly, dismiss it.

14. The parties would, however, bear their own costs of the cause in the peculiar facts and circumstances of the case.

(S.D. ANAND)
JUDGE

September 27, 2006 **(J.S. KHEHAR)**
vkd **JUDGE**